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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,457	03/19/2001	Jos Kobussen	P03547US1	2424

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/743,457	Applicant(s) KOBUSSEN ET AL.	
	Examiner Robert Madsen	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. The Amendment filed August 15, 2003 has been entered. Claims 1-14 remain pending in the application.
2. The objection to claims 3 and 4 are hereby withdrawn.
3. The rejection of claims 3 and 4 made under 35 U.S.C. 112, first and second paragraphs are hereby withdrawn.
4. The rejection of claims 1,5,8-14 under 35 U.S.C. 102 (b) as being clearly anticipated by Morgan et al. (WO 9312660) stand and are repeated below.
5. The rejection of claims 1-7,9 under 35 U.S.C. 102 (b) as being clearly anticipated by Taylor et al. (GB 1232801) stand and are repeated below.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1,5,8-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Morgan et al. (WO 9312660). See Abstract, Page 1-2nd paragraph, Page 3, Page 5 –1st paragraph, Page 7-1st paragraph, and Page 9-1st paragraph.
8. Claims 1-7, and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taylor et al. (GB 1232801). See Page 2, lines 55-95, Example 1 on Pages 6-7.

Response to Arguments

9. Applicant's arguments filed August 15, 2003 have been fully considered but they are not persuasive.

10. Applicant argues that neither Morgan nor Taylor teach or suggest any application or use of an ada in conjunction with co-extrusion process, or specifically the recited limitation of requiring that the ada is applied "just prior to during, or after said coextrusion".

11. However, both Morgan and Taylor meet the *claimed* limitations. Both teach co-extruding a strand of edible material around an inner strand of food material and coagulating the casing around the food material and linking the strand to individual portions. Both further include lubricating the casing material with a flowable ada "just prior to" co-extruding. Morgan et al. teach vegetable oil and Taylor teaches glycerin (Relevant pages cited in rejection). There is no claim language that would distinguish the applicant's claimed invention from the lubricating steps of Morgan et al. or Taylor. That is, there are no limitations directed to a specific (1) quantity of ada, (2) time or step in the process when lubricating is conducted (e.g. "just prior to" does not limit the lubricating step to any one single time or step before co-extrusion), or method of lubricating (e.g. via dipping or spraying).

12. Applicant further argues that neither reference teaches the splitting problem or any solution for the problem. However, this feature upon which applicant relies (i.e., the ada prevents splitting) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

13. Applicant asserts that Morgan cannot anticipate the claims of the present invention because an examiner stated in the International Preliminary Examination Report of October 31, 2000 that "the subject matter of claim 1 differs from [Morgan]". However, the opinions expressed in the International Preliminary Examination Report are not relevant to the examination of a U.S. Patent application. Applicant is being provided with a copy of Article 33 of the Patent Cooperation Treaty, which addresses this issue. Applicant's attention is directed to items (1) and (5).

Article 33

The International Preliminary Examination

- (1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed inventions appears to be novel, to involve inventive step (to be non-obvious), and to be industrially applicable.
- (2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.
- (3) For purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.
- (4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.
- (5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purpose of deciding whether, in that State, the claimed invention is patentable or not.
- (6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761




MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700